DATO' WAHID DON v. PP

HIGH COURT MALAYA, KUALA LUMPUR
AMELIA TEE ABDULLAH J
[CRIMINAL APPEAL NO: 42S(A)-141-11-2013]
22 FEBRUARY 2016

CRIMINAL LAW: *Corruption – Corruptly receiving gratification – Gratification as inducement to expedite approval of visas with reference ('VDRs') application – Whether ingredients of charge proved – Whether accused had authority to approve VDRs – Whether accused had corruptly agreed to accept gratification for himself – Whether prima facie case established – Whether defence probable – Whether defence raised doubts in prosecution's case – Anti-Corruption Act 1997, s. 11(a)*

CRIMINAL PROCEDURE: *Sentence – Corruption – Accused found guilty of corruptly receiving gratification as inducement to expedite approval of visas with reference ('VDRs') application – Accused sentenced to six years' imprisonment and fine of RM300,000, in default one year imprisonment – Maximum penalty for offence under s. 11(a) of Anti-Corruption Act 1997 – Whether sentence fair and reasonable – Whether manifestly excessive*

The appellant, the Director General of the Immigration Department, was charged under s. 11(a) of the Anti-Corruption Act 1997 ('the Act') at the Sessions Court for the offence of corruptly accepting for himself, gratification in the sum of RM60,000 from a businessman, Dato Low ('PW29') as an inducement to expedite the approval for the visas with reference ('VDRs') application of 4337 Bangladeshis to enable them to enter Malaysia. According to PW29, one Sim Guan Yew ('Sim') had asked him to ask around whether any of PW29's friends wanted to apply VDRs for foreign workers. PW29 then approached one Dato' Zul ('PW21'), who was involved in a business which dealt with, *inter alia*, outsourcing workers and obtaining of VDRs from the Immigration Department. PW21 would SMS the particulars for approval to him and PW29 would, in turn, SMS the particulars to the appellant for his approval. Following the arrest of PW21, PW29 was arrested by the Anti-Corruption Agency ('ACA') officers and had agreed to give cooperation regarding an ongoing investigation. PW29 made a phone call to the appellant and told the latter that he had a packet to deliver. Along with two other ACA officers, PW29 headed to the appellant's house. Upon his arrival, PW29 passed a bag containing RM60,000 and left in a hurry. After PW29 walked away, the appellant was arrested. In his defence, the appellant denied knowing (i) that PW29 was coming to give him money; and (ii) the contents of the bag. At the conclusion of the trial, the Sessions Court Judge ('the SCJ') found the appellant's defence to be an afterthought and a mere denial. The appellant was found guilty as charged and sentenced to six years' imprisonment and to a fine of RM300,000, in default, one year imprisonment. Hence, the present appeal by the appellant against his conviction and sentence.

Held (dismissing appeal; affirming conviction and sentence):

(1) The prosecution had established the ingredients of the charge. The appellant was, at the material time, a Government servant who had corruptly agreed to accept for himself a gratification of RM60,000 in cash from PW29 as a reward for hastening the approval of the VDRs. The link between the witnesses showed that their evidence was relevant to connect the approval of the VDRs for cash to the appellant. All 4337 applications for VDRs were approved by the appellant. Whilst it was true that there was no time limit to approve the VDRs, the fact remained that the appellant had approved certain VDRs very quickly whilst others had languished unapproved. Those who had sought 'assistance' for speedier approvals would have their VDRs approved earlier. (paras 96, 98, 99 & 103)

(2) The SCJ was correct in finding that the prosecution had succeeded in making out its case beyond all reasonable doubt. The appellant's defence was more in the nature of a bare denial. His protestations that he did not ask PW29 and certain other persons for money for the approvals of the VDRs would sound hollow and thin in light of clear evidence from the prosecution witnesses as to how the transactions were carried out by different actors. The link between the requests for approval of VDRs and the list of VDRs approved would amount to positive proof that such scheme for expediting approval of VDRs for payment did in fact exist. The final entrapment where the appellant accepted the plastic bag containing monies was the only last card in the whole deck of cards. (para 104)

(3) The maximum penalty for an offence under s. 11(a) of the Act is imprisonment for a term of not less than 14 days and not more than 20 years and a fine of not less than five times the sum or value of the gratification or RM10,000, whichever is higher. The sentence of six years' imprisonment and fine of RM300,000, in default, one year imprisonment was fair and reasonable and not manifestly excessive. (paras 107 & 108)

Case(s) referred to:
Ahmad Azizi Azimi lwn. PP [2013] 3 CLJ 161 CA ***(refd)***
Dato' Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 FC ***(refd)***
Dato' Seri Anwar Ibrahim v. PP & Another Appeal [2004] 3 CLJ 737 FC ***(refd)***
Gooi Loo Seng v. PP [1993] 3 CLJ 1 SC ***(refd)***
Hamidon Mat Yatim v. PP [1995] 3 CLJ 724 HC ***(refd)***

Legislation referred to:
Anti-Corruption Act 1997, ss. 11(a), 16, 42(1)
Evidence Act 1950, ss. 145, 155

For the appellant - V Sithambaram; M/s Sitham & Assocs
For the respondent - Abdul Razak Musa (Umar Saifuddin Jaa'far with him), DPPs; Suruhanjaya Pencegahan Rasuah Malaysia

Reported by Najib Tamby

JUDGMENT

Amelia Tee Abdullah J:

[1] The appellant, Dato' Wahid bin Md Don, was charged in the Sessions Court Kuala Lumpur with an offence under s. 11(a) of the Anti-Corruption Act 1997 (Act 575) punishable under s. 16 of the same Act. On 30 October 2013, the learned Hakim Mahkamah Sesyen ('HMS') had found the appellant guilty and sentenced him to six years imprisonment and to a fine of RM300,000, in default to one year imprisonment. Being dissatisfied with the decision of the learned HMS, the appellant has appealed against the said conviction and sentence.

[2] The charge against the appellant reads as follows:

> Bahawa kamu, pada 10.7.2008, jam lebih kurang 10.15 malam, di No. 3167 Jalan Lembah Ledang, off Jalan Duta, Kuala Lumpur, dalam Wilayah Persekutuan Kuala Lumpur, sebagai seorang ejen kepada Kerajaan Malaysia, iaitu Ketua Pengarah, Jabatan Imigresen Malaysia, Putrajaya, telah secara rasuah menyetuju-terima bagi diri kamu suatu suapan, iaitu wang tunai RM 60,000-00 daripada Dato Low Chang Hian, yang merupakan sebahagian daripada pembayaran bagi upah untuk melakukan suatu perbuatan berhubungan dengan hal ehwal prinsipal kamu, iaitu mempercepatkan kelulusan permohonan Visa Dengan Rujukan (VDR) untuk Warganegara Bangladesh sejumlah 4337 bagi membolehkan mereka masuk ke Malaysia, oleh yang demikian itu, kamu telah melakukan satu kesalahan di bawah Sek. 11 (a) Akta Pencegahan Rasuah 1997 (Undang-Undang Malaysia Akta No. 575), dan boleh dihukum di bawah Seksyen 16 Akta yang sama.

Background

[3] A brief background of this case would be in order. In the first instance, the appellant was acquitted and discharged by the learned HMS at the Sessions Court at the close of the prosecution's case when she found that the prosecution had not made out a *prima facie* case against the appellant. Following the appeal of the Public Prosecutor, the order of acquittal and discharge of the appellant was affirmed by the High Court. However, following a further appeal by the Public Prosecutor, the decision of the High Court was overturned by the Court of Appeal which sent back the case for the Sessions Court to hear the defence. No written grounds were given by the Court of Appeal for this decision.

[4] Learned counsel for the appellant has submitted that the Court of Appeal in its oral judgment had given two reasons why the HMS had erred when she held at the end of the prosecution's case that the appellant had rebutted the presumption that he had corruptly received the money. The reasons, as gleaned from a New Straits Times report as well as a report from The Star, were:

(i) that the HMS had erred in holding that the presumption was rebutted without hearing Wahid's defence; and

(ii) the HMS had failed to consider the totality of the evidence of the prosecution witnesses, particularly that of Mohamad Hasnan Hassan, a foreign workers' consultant.

The HMS Findings

[5] Since the Court of Appeal had found that a *prima facie* case had been made out and had remitted the case back to the Sessions Court to hear the defence; having found that the presumption of corruptly accepting the gratification was presumed under s. 42(1) of the Anti-Corruption Act 1997, the burden would now fall upon the appellant to rebut the said presumption. The appellant had given his defence before the HMS and in her grounds of decision the HMS had found that the defence of the appellant was more of an afterthought. The learned HMS had gone on to say that:

> Melihatkan cara dan diperingkat-peringkat akhir ia ditimbulkan di dalam kes pembelaan juga boleh menjumlahkan keterangan-keterangan tersebut sebagai rekaan tertuduh semata-mata.

[6] The learned HMS was of the view that the appellant's denial as to knowledge of the contents of the plastic bag and that he did not know that it contained money was but a bare denial and that there was no other evidence to support it. Further, the appellant had adduced no other evidence to rebut the evidence that was adduced by the prosecution.

[7] Thus, the learned HMS found that apart from the appellant's evidence that was lacking in credibility, the defence was but a pure fabrication, an afterthought and a bare denial and had failed to cast any reasonable doubt as to the truth of the prosecution's case. And it was for that reason that the learned HMS had found the appellant guilty and had convicted him accordingly.

[8] Was the HMS correct in coming to that decision? The court will first look at the defence put forth by the appellant.

The Appellant's Defence

[9] The appellant commenced service with the Government in 1977. On 1 October 2006, he was appointed as the Ketua Pengarah Jabatan Imigresen in KDN until his arrest on 10 July 2008. Among his duties as Ketua

Pengarah with effect from 12 June 2008 (after receiving the mandate from the Minister of Home Affairs) was the approving of calling visas or VDRs of Bangladeshi workers.

[10] The appellant had testified in somewhat detail as to how he came to be mandated with the approval of calling visas. Initially, it was only the Minister who had the authority to approve VDRs. *Vide* a cover letter dated 10 June 2008 (P3), the appellant had forwarded a kertas cadangan (P4) for the Minister to approve the Ketua Pengarah Imigresen to "key-in" the approval for VDRs for Bangladeshi foreign workers. The rationale for the proposal was that there were a total of 22,854 foreign workers still awaiting the approval of VDRs and a total of 91,607 who had yet to submit their applications. The delay in obtaining the VDRs after the levy had been paid was causing some measure of unhappiness among the employers. The Minister had agreed with the appellant's proposal on the condition that he (the Minister) would still retain the right to approve VDRs and that the Ketua Pengarah Imigresen would have to submit to him a list of all VDRs approved by him on a weekly basis. During cross-examination, the appellant denied that the kertas cadangan for the appellant to approve VDRs for Bangladeshi workers was a plan of the appellant, Sim and PW29 to get easy money and that from the very beginning he knew that he would be getting RM20 per VDR approval.

[11] As such, following the Minister's approval of the appellant's proposal, both the Minister and the appellant as Ketua Pengarah Imigresen would have the authority to approve VDRs for Bangladeshi workers and this would ostensibly assist in clearing the back log of applications awaiting approval. The appellant had then created his password to access the FORM system which would enable him to give his approval for VDRs whether he was in the office, at home or anywhere else. He was able to approve VDRs wherever he was as long as he had internet access and 3G. Whenever complaints were received as to the delay in obtaining approvals, he would be able to look into the system and to approve the VDRs if everything was in order. Friends would also contact him for the approval of VDRs if they had been waiting a long time for such approvals and had paid the levy. The appellant stressed that he did not approve any VDRs which were not in order.

[12] The total number of VDRs approved by the Minister from 12 June 2008 to 10 July 2008 was about 4,000. During the same period, the appellant had approved about 12,000 VDRs.

[13] The appellant was cross-examined at length as to the method of approving VDRs. He agreed that for each application, there were various documents which were entered into the FORM system. He admitted that he had not examined the files one by one but had only looked at the FORM

A system before giving his approval. He agreed that all he had done was to key-in his approval both at home and in the office. Although the VDRs that he had approved for Mutual Speed corresponds in terms of number of VDRs to the figures in P195, the appellant was insistent that all the approvals that were given by him were in order. When it was pointed out that there were B applications that were still not approved after a year and yet there were those that were approved within one or two days after the payment of RM350 was paid, the appellant could only reiterate that the applications that he had approved were in order. The court is of the considered view that such an explanation amounted to a non-explanation.

C **[14]** The appellant admitted knowing Dato Seri Low Chang Hian (PW29) from the time he used to play golf with the then Minister of Home Affairs, Datuk Seri Radhi, some three years before his arrest. PW29 is a businessman and the owner of Stemlife Sdn Bhd who frequently visited the appellant at his house.

D **[15]** The appellant also knew a Sim Guan Yew who was introduced to him by PW29. He knew Sim as a businessman who owned Intent Creative Sdn Bhd. At that time, Sim's company had applied to the Minister of Home Affairs through the Minister of Tourism for approval to set up a "Pejabat Pewakilan menguruskan visa di Negeri China dan India". Sim used to visit E the appellant's house, sometimes with PW29 and sometimes alone.

[16] According to the appellant, PW29 had come to the appellant's house at about 10pm on 10 July 2008. Before his arrival, he had telephoned to say that he was coming to the house and with a request that the appellant pass something to Sim. Sim was then in Singapore and PW29 was going to F Indonesia. Sim had an appointment with the appellant on 11 July 2008, hence the request to the appellant to pass something to Sim. During the telephone call, PW29 did not inform the appellant that he was going to hand over RM60,000 as part payment for the approval of VDRs. The appellant testified that he did not suspect anything amiss. When the appellant opened G the door, PW29 "dengan tergesa-gesa" had handed over a plastic packet at the front door and requested that it be given to Sim. PW29 had repeatedly said that he was in a hurry as he was leaving for Jakarta the next morning. During cross-examination, the appellant had agreed that PW29 could have banked the monies into Sim's bank account without having to bring it to the H appellant's house.

[17] The appellant testified that he had left the packet on a table near the door. When he wanted to close the front door, two BPR officers rushed in and arrested him for receiving bribes. He denied the suggestion that he had opened the plastic packet and looked at its contents after receiving it. He I claimed that he was shocked ("terkejut") and had denied by saying "Mana ada? Mana ada?" The time that had elapsed between PW29 leaving the house

and the arrival of the two BPR officers was only a few seconds. More BPR officers (about 10-12) had entered the house about 1-2 minutes later. One of them had taken the plastic packet, opened it and showed the appellant the monies in it.

[18] The court notes that the appellant had denied any quarrel or enmity with PW29 or PW30 which may have led these persons to "aniaya" him in their evidence.

[19] During cross-examination, the appellant admitted that apart from the RM60,000, a lot of other monies were found in his house, in his pocket and in his bedroom on the day in question. From the evidence that was adduced, RM10,450 was recovered from the appellant's left pocket, about RM3,150 from his wallet and about RM12,300 (P223) in a yellow envelope in a black bag on the vanity table in the master bedroom. Another RM92,500 (P228) in a black plastic was recovered from a 'beg galas' in the master bedroom. Notwithstanding objections by learned counsel for the appellant to the admission of this evidence about these other monies, the learned HMS had allowed the admission of this evidence.

[20] The appellant denied that the monies found in the plastic packet in his house belonged to him. He denied that this sum of RM60,000 was part of his share for the approval of the VDRs. He denied ever asking money from PW29 or from anyone else for the approval of VDRs. He denied knowing Mohd Hasnan Hassan (PW18) and Buruganudeen (PW19) and denied asking them for payment for the approval of VDRs. He denied asking Buruganudeen to collect RM390 for the approval of VDRs. He claimed that it was only during the trial that he learnt that PW19 had collected RM350 for the approval of each VDR.

[21] The appellant also denied knowing arwah Abd Jabbar or his wife, Rusalwani (PW20). He also denied knowing Datuk Zulkafli bin Mahmud (PW21). He told the court that he had never asked any money from PW21 for the approval of VDRs. He claimed not to know that PW21 was asking for RM300 from Buruganudeen and Abd Jabbar for the approval of each VDR.

[22] As regards the time that is taken to approve a VDR, it is the appellant's evidence that if the documents were complete and the levy paid, it would take one or two hours or even a week depending on whether he had the time. He denied the prosecution's suggestion that he had expedited the approval of the VDRs for PW29 for payment of RM280 per VDR. He denied that he had expedited the approval of 4337 VDRs for PW29 for RM86,740 and that his share was 4337 x RM20. He strenuously denied that the RM60,000 found in the plastic packet in his house on 10 July 2008 was a part of the RM86,740. The appellant denied approving 4773 VDRs for

A PW29. As far as he could remember, he had only approved 400-500 VDRs for PW29. PW29 had contacted him about four to five times and each time the appellant had approved 50-100 VDRs for him. He had helped PW29 as a friend. He had also helped many other friends.

B **[23]** The appellant had also denied the prosecution's case that Sim, through PW29, had handed to the appellant two envelopes containing RM50,000 and RM20,000 prior to the date of his arrest on 10 July 2008.

Impeachment Of The Appellant

[24] In the course of the hearing, the prosecution had sought to impeach C the credibility of the appellant under ss. 145 and 155 of the Evidence Act 1950 based on five areas where it contends there were material contradictions. However, impeachment proceedings had only proceeded on four alleged discrepancies after learned counsel for the appellant had successfully raised objections on the second alleged discrepancy which he D contends was not material to the charge. The learned HMS had found that the cautioned statement of the appellant was voluntarily made and had marked it as P233. The four alleged discrepancies are as follows:

(a) (i) In P233, the appellant had stated that there had been many meetings between him, Sim and PW29 before 12 June 2008. In one of the E meetings, Sim had informed that the payment that was to be charged was RM300 per worker and that RM25 was for the appellant. However, the appellant had denied in court that from "awal lagi" and even before he was mandated to approve VDRs, he had already been informed that he would receive RM20 per VDR;

F (ii) In P233, the appellant stated that Sim had asked him to prepare a kertas cadangan for the appellant to key-in approvals for VDRs for Bangladeshi workers. In court, the appellant denied that the cadangan or suggestion was made by him, Sim and PW29 as a means of getting easy money;

G (b) In P233, the appellant testified that the collections from the employees for the approval of the VDRs were received by Sim and PW29. In court, he denied knowing about the requests from 'Datuk Zul' from Virtual Manpower. He also denied that PW29 was collecting monies from companies to be given to the appellant for the approvals;

H (c) In P233, the appellant admitted that after he had placed the plastic that was handed to him by PW29 on the table, he had opened the plastic a little and had found it to contain cash. In court, he claimed not to know that the plastic contained money and denied opening the plastic a little to see what was inside; and

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(d) In P233, he admitted that he had received the money from PW29 and that the money was for the approval of VDRs by him for PW29. The RM60,000 was for the approval of 200 workers, that is, RM300 for each worker. In court, the appellant testified that PW29 had not told him that the RM60,000 was the appellant's share for the approval of the VDRs. He denied that the RM60,000 was part of his share of RM20 per VDR.

[25] The appellant had given his explanations in respect of the contradictions. For the first contradiction, the appellant had explained that his answer about the kertas cadangan had been taken out of context because the sentence following it was that he understood from Sim that the cadangan came from Syed Abdullah and that the appellant's proposal had been approved by the Minister. According to the appellant, the two sentences read together meant that the kertas cadangan was at the request of the Minister. In respect of this explanation, the court agrees with the respondent that the above explanation does not explain why the appellant had stated in his cautioned statement that it was Sim who had told him to prepare the kertas cadangan. The court agrees that the appellant's explanation about the alleged role of Syed Abdullah and the Minister did not explain why the appellant had stated in P233 that it was Sim who had told him to prepare the kertas cadangan.

[26] In respect of the second contradiction, the appellant had offered the explanation that he had never received any monies from the employers through PW29 and Sim. He claimed that he only knew about the duo collecting monies for a "political fund" after he was told so by the BPR officers. He claimed that he did not know if the duo was using his name and he denied receiving any payment for the approval of VDRs. The court is of the view that the appellant's explanation as such had not in any way explained the contraction with his cautioned statement.

[27] In respect of the third contradiction, the appellant's explanation was that the prosecution's questions were confusing. However, he contends that he did not know the contents of the plastic bag until he was shown its contents by a BPR officer. The court notes that this explanation would amount to a denial only. Quite apart from the fact that the plastic bag was transparent and its contents could be seen from the outside, there is also the unshaken evidence from Chang Chin (PW30) that he had seen the appellant opening the plastic bag and looking inside at its contents.

[28] In respect of the fourth contradiction, the appellant's explanation is that his answers in court were consistent with and did not contradict his earlier statement. He maintained that he had neither asked for nor received any monies for the approval of VDRs. The court agrees with the respondent that the appellant was attempting to confuse the court. The fact remains that in his cautioned statement he had stated that the RM60,000 was payment for 200 VDRs that had been approved by him.

[29] The court has carefully considered the evidence relating to the impeachment proceedings. The court notes that the learned HMS had carefully considered the appellant's explanations and had found them to in the nature of "approbate and reprobate and blowing hot and cold" as it suits him. The learned HMS had found that the explanation that was given by the appellant as regards the discrepancy between the four specific portions of his cautioned statement and his evidence in court "tidak dapat menyangkal atau menolak bahawa percanggahan-percanggahan tersebut wujud dengan jelas dan nyata". As such, the learned HMS had found that the said explanations could not be considered and had rejected them accordingly.

[30] The court has carefully considered the contradictions which the court agrees are material contradictions. After considering the explanations of the appellant on the four material contradictions, the court is in agreement with the learned HMS that the explanations of the appellant in the main could not be considered and thus the evidence of the appellant stood impeached.

Effect Of The Impeachment

[31] What is the effect of the impeachment on the accused's evidence? In her grounds of decision, the learned HMS had referred to the case of *Dato' Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; [1983] 2 MLJ 232. There the Federal Court had held as follows:

> When a witness's credit is sought to be impugned under the provisions of sections 145 and 155(c) of the Evidence Act his credit stands to be assessed as a whole with the rest of the evidence at the appropriate stage, that is to say, at the close of the case of the prosecution or for the defence, as the case may be. No immediate order of a summary nature can or should be made as was done in this case and the right of cross-examination and re-examination according to the circumstances should not be denied as it may well be that on the exercise of such right his credit might be repaired, restored or re-established (*Paramasivam v Public Prosecutor*; *Sat Paul v Delhi Administration*).
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> Abdoolcader, J. took the correct approach in *Public Prosecutor v Datuk Haji Harun bin Haji Idris & Ors* when he refused an application to make an immediate order impeaching the credit of a witness whose evidence contradicted his statement to the police but went on to consider his evidence as a whole at the close of the case for the prosecution and then discounted it as discredited and wholly disregarded it in the circumstances. The procedure for impeachment should be on the lines set out in *Muthusamy v Public Prosecutor* but we must stress that the evidence of such a witness must be considered as a whole with the rest of the evidence at the appropriate stage and that any practice which might have developed, as we are told, in the lower courts of making an immediate order of impeachment once a material discrepancy is discovered and no

explanation is either offered or accepted, is wholly wrong and should cease immediately. We need only observe in reiterating the absolute fallacy of any such wholly unwarranted practice that a testifying witness cannot be dealt with and struck out or struck off *ex tempore* and in midstream at an intermediate stage of the proceedings as if he were a defective writ or pleading.

[32] In this case, the learned HMS had correctly refrained from making a decision on whether to impeach the credibility of the appellant at that point in time but had deferred making a decision on that score until the end of the case (see p. 200 of rekod rayuan jilid I).

[33] In her grounds of judgment, the learned HMS had found that the explanations of the appellant in respect of the contradictions could not be considered. She found that the contradictions were clear and had rejected the appellant's explanations. In brief, the HMS allowed the learned deputy's application to impeach the credit of the appellant and accordingly found the appellant's credibility "tercabar dan termusnah" (p. 57 of jilid I). The learned HMS was of the view that in the circumstances, the entire evidence of the appellant was also "tercabar".

[34] However, in light of the decisions of the Federal Court in *Gooi Loo Seng v. PP* [1993] 3 CLJ 1; [1993] 2 MLJ 137 and *Ahmad Azizi Azimi lwn. PP* [2013] 3 CLJ 161, it would appear that the learned HMS finding in respect of the effect of impeachment on a witness evidence may not be above reproach. In *Ahmad Azizi Azimi* (*supra*), the Court of Appeal had referred to the case of *Dato' Seri Anwar Ibrahim v. PP & Another Appeal* [2004] 3 CLJ 737 where Abdul Hamid Mohamed FCJ (as he was then) had stated as follows:

... On the question whether, where a witness is impeached, his whole evidence is to be disregarded, there appears to be conflicting decisions in our courts. Earlier cases seem to take the rigid view that once a witness is impeached, his whole evidence becomes worthless (see *Koay Chooi v. Regina* [1955] 1 LNS 41; [1955] MLJ 209; *Mathew Lim v. Game Warden, Pahang* [1959] 1 LNS 57; [1960] MLJ 89 and *Public Prosecutor v. Munusamy* [1980] 1 LNS 63; [1980] 2 MLJ 133 (FC). On the other hand, in *Public Prosecutor v. Mohd Ali bin Abang & Ors* [1994] 1 LNS 189; [1994] 2 MLJ 12, Chong Siew Fai J (as he was then) took the view that the fact that the credibility of a witness is impeached does not mean that all his evidence must be disregarded. *It is still incumbent upon the court to carefully scrutinise the whole of the evidence to determine which parts of her evidence are the truth and which should be disregarded.*
(emphasis added)

[35] The court notes that the learned HMS had, notwithstanding her finding that the credibility of the appellant stood impeached, nevertheless gone on to consider the defence of the appellant and whether it had rebutted the statutory presumption under s. 42(1) of the Anti-Corruption Act 1997 and whether it had cast a reasonable doubt as to the truth of the prosecution's

A case. In fact, the court will go further to say that in considering this, regard should be had to the evidence adduced during the prosecution's case in order to properly determine if the statutory presumption was rebutted and whether a reasonable doubt has been raised.

Evidence Adduced In The Prosecution's Case

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[36] There appears to be some dispute as to what were the facts that had been adduced in this case. Learned counsel for the appellant had alleged in court that the facts of the case as stated by the respondent at p. 6 of the respondent's submissions under the heading 'Perangkap Keempat' were inaccurate. According to learned counsel for the appellant, what was stated there were not the facts of the case but they were what the prosecution was contending, but was contrary to what PW29 had said in evidence. In the circumstances, the court has taken considerable pains when considering the submissions of the parties, to discover what were, in truth, the facts that were adduced during the course of the trial.

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[37] The sequence of the telling of events would commence from the evidence of Mohamad Hasnan bin Hassan (PW18). He describes himself as a consultant for bringing in foreign workers into Malaysia. According to PW18, he knew 'Borhan' (Buruganudeen a/l Mohamed Ismail) (PW19) who was introduced to him by his friend named Hj Abdullah bin Man. 'Borhan' was introduced to him because he ('Borhan') had connections with the appellant, the then Director General of Immigration ("the DG") for expediting the approval of VDR applications.

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[38] PW18's first meeting with 'Borhan' was at the Restoran Al-Taqwa in June 2008. There was a discussion on how to expedite the approval of VDRs from the DG. 'Borhan' informed PW18 that this was not free but required a payment of RM350 per person. PW18 had brought with him about 200 Surat Akuan Bahagian Pekerja Asing. These are documents issued by the Immigration Department after the levy has been paid. At this meeting, PW18 was directed to prepare the payment for "tujuan memproses calling visa tersebut". To the best of PW18's knowledge, no payment was required for the VDR. As such, PW18 understood that the payment of RM350 as requested by 'Borhan' to be a "bayaran imbuhan" to the party approving the VDR. Since Hj Abdullah was the person who had introduced him to 'Borhan', PW18 had related what had happened during the meeting to Hj Abdullah. According to PW18, Hj Abdullah said that this was wrong and should be reported to the Badan Pencegah Rasuah (BPR). Following this, PW18 had lodged a report to BPR on 3 July 2008 at the SPRM Headquarters at Putrajaya (P193).

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[39] The second meeting with 'Borhan' took place one or two days after the first meeting. Although PW18 had brought a banker's cheque for RM87,500 (P194) for the approval of VDRs for 250 persons, however PW18 had only brought a list for 130 persons. Because of this 'Borhan' had not accepted the bank draft as the payment was more than that required for the list of applications. Although he received the list of applications, he said that he would KIV the list until the balance of the 250 names was obtained.

[40] At the third meeting, PW18 had brought with him the earlier banker's cheque (P194) for RM87,500 (for 250 VDRs) and cash of RM1,750 (for five other Bangladeshis). After the complete documents were handed over to 'Borhan', they had gone to the latter's office where 'Borhan' had forwarded the documents for the approval of the VDRs. PW18 did not know to whom the documents were forwarded to. He had asked 'Borhan' when the approvals could be obtained and was told "secepat mungkin". Although PW18 waited at Borhan's office until 8.30pm that day, no approval was obtained that day. The banker's cheque and cash were not handed over to 'Borhan' at the third meeting because the approvals had yet to be obtained. PW18 went home at 8.30pm that night.

[41] PW18 further testified that at 10.30pm that same night, he had received a call from 'Borhan' informing him that the DG of Immigration had approved all the 255 VDRs. They then agreed to meet the next day.

[42] It was at their fourth meeting at the same restaurant that 'Borhan' had asked for the money to be handed over to him because the VDRs had been approved. PW18 thus handed over the same banker's cheque and the cash of RM1,750 (which was supplied by BPR). After that PW18 had left the restaurant after giving the pre-arranged signal, that is, lifting his shirt which had earlier been tucked in and paying the bill at the restaurant.

[43] The court notes that during cross-examination, PW18 had agreed that the applicant/employers in the applications for VDRs had refused to pay any "rasuah atau imbuhan" for the approval of the VDRs and that it was the BPR that had paid the corruption monies. He agreed that whatever he had testified in court about the DG of Immigration was what was told to him by 'Borhan'. He testified that he had tried to bargain with 'Borhan' about the RM350 payment per VDR approval but that 'Borhan' did not agree to any reduction.

[44] PW18 was then arrested by the BPR.

[45] We now move to the evidence that was adduced from Buruganudeen a/l Mohamed Ismail (PW19), the man who was also known as 'Borhan'. He claims to be a manpower consultant dealing with VDRs for bringing in foreign workers and describes his role as follows:

A Peranan saya dalam isu calling visa berhubung dengan orang yang ada hubungan dengan Menteri Dalam Negeri atau dengan JIM. Calling visa untuk Bangladesh pada mulanya Menteri Dalam Negeri sahaja yang boleh luluskan dan kemudiannya tugas diserahkan kepada Ketua Pengarah Imigresen pada 12.06.08 pada hari Khamis.

B **[46]** Buruganudeen or 'Borhan' (PW19) had described how he came to be involved in the business of calling visas or VDRs. After they had obtained approvals from KDN for bringing in the foreign workers, they had paid the levy which was valid for six months. They had then prepared the biodata through the viara from Bangladesh. After the biodata is online at the C Immigration Department's system, they had to make payment of RM50 + RM60 + RM20. After payment is made, they would be issued with an acknowledgement receipt. They would then have to wait a few week for the VDRs to be issued. Because the delay in securing the VDRs was affecting their business, they had to find ways to expedite the approval of VDRs including meeting and appealing to the Minister. There were VDRs which D were approved straightaway and there were those that required payment such as for the political fund.

[47] PW19 admitted that in the VDR business, he knew an Abdul Jabbar Abdullah (deceased) and his wife Puan Rusalwani bt Husin (PW20). Abdul E Jabbar, who had assisted PW19 in obtaining VDRs, had said that he was dealing with the Minister and the Immigration. The prosecution had attempted to adduce some evidence through PW19 as to what was said to him by the deceased as the persons that he was dealing with in the Immigration Department but that was rightly ruled by the learned HMS as hearsay and inadmissible.

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[48] PW19 had testified as to his dealings with Mohd Hasnan (PW18). PW18 had first contacted PW19 by phone on or about 26 June 2008 to enquire about arranging for VDRs. They had met (finally) at Restoran Taqwa Sri Gombak to discuss price and other conditions. The price was RM350 per G foreign worker. PW18 had enquired as to whom PW19 was dealing with but PW19 had not revealed whether he was dealing with the Minister or the Ketua Pengarah. PW18 was only told to get ready the money for the VDRs.

[49] After some hiccups, the duo met again on the evening of 4 July 2008 at Restoran Taqwa for the purpose of handing over the akuan penerimaan and H the banker's cheque. PW18 had handed to PW19 some 130 akuan penerimaan. However, PW19 had not accepted the banker's cheque because the amount in the cheque did not tally with the number of akuan penerimaan. They had met again on 7 July 2008 at the same restaurant. This time PW18 had shown PW19 the banker's cheque and the balance of the list of I applications for VDRs, altogether numbering 125. PW19 had enquired as to how payment was to be made for the additional five VDRs. PW18 had explained that as the number was small, payment for the remaining five

VDRs would be made in cash upon receipt of the approvals. The two of them had then proceeded to PW19's office which was only 150-200 meters away from the restaurant. PW19 testified that he had then contacted Abdul Jabbar about the akuan penerimaan which was with him and was asked to SMS the list to him as well as to fax the list to his house. PW19 had told Abdul Jabbar that the VDRs were needed urgently. Later in the day, Abdul Jabbar had made a phone call to PW19 to inform that the KP was not in the office. Although there were objections to this evidence as amounting to hearsay, however the HMS had correctly ruled that the evidence as adduced did not involve any fact or statement of Jabbar as against any third party and as such it was not hearsay.

[50] The next day, an arrangement was made to meet at Restoran Taqwa at about 11.30am. There, PW18 handed to PW19 the banker's draft for RM87,500 and cash of RM1,750 for the five additional VDRs. PW18 had asked PW19 to check that the payment was correct. PW19 identified the banker's draft (P194) which was made out in his name but was unable to confirm whether the cash of RM1,750 was the same as that which he had received.

[51] After the banker's draft and cash were handed over, PW18 had left the restaurant. PW19 was also preparing to leave when he was detained by BPR officers. This was on 8 July 2008 at about 12-12.30pm.

[52] According to PW19, he had never told anyone that he had any "jalan" with the Ketua Pengarah. His dealings were with a person named Syed Abdullah who was the brother-in-law of the then Minister, Syed Albar.

[53] PW19 testified that in the course of investigations by BPR officers, he was asked whether he had communicated directly with the DG of Immigration. He had denied this. At the BPR office in Putrajaya, a recorded call was made to Abdul Jabbar asking him to come but Abdul Jabbar did not appear at the appointed time. He only appeared at about 7-7.30pm with his wife where they were then detained by the BPR for investigation.

[54] The court notes the consistency between the evidence of PW18 and PW19 as regards the events that were related by them. The court is of the considered view that PW18 and PW19 were witnesses of truth. This is especially so of PW18 who had lodged a complaint with the BPR because he felt that it wrong to ask for payment for the approval of VDRs.

[55] It was unfortunate that Abdul Jabbar bin Abdullah could not be called as a witness during the hearing at the Sessions Court as he had passed away on 6 July 2009. However, his widow Rusalwani bt Husin (PW20) attended court as a witness and she was able to testify that in 2006, her late husband was involved in what she described as the manpower business, that is, the supply of foreign workers. At times, she had assisted her late husband

in dealing with the Immigration Department for the approval of calling visas (VDRs). She explained that first there would be an application to the Kementerian Dalam Negeri; and when the approval was obtained, the levy would have to be paid at Jabatan Immigration; and only after that they would apply for the VDRs.

[56] PW20 described the role that was played by her late husband as that of a middleman or "perantaraan". He would obtain the surat akuan and then SMS it to a "orang tertentu". He would receive a payment or reward. According to her, the amount received was RM10 per person. The highest that was received in a single day was RM3,000.

[57] PW20 admitted knowing 'Borhan' through her late husband. 'Borhan' was also involved in the supply of foreign workers. She admitted that she had communicated with 'Borhan' before *via* telephone, SMS and also by fax.

[58] PW20 also knew Dato' Zulkafli b Maulud (PW21) who was the owner of PSSB, an outsourcing company supplying foreign workers from Bangladesh, Indonesia, India and other countries.

[59] PW20 testified that on 7 July 2008 at about 10.30am, she had received a telephone call from 'Borhan' saying that he had faxed an akuan penerimaan for VDRs. She saw a faxed document asking for 255 VDRs for four companies, namely Syarikat Vectica Resources Sdn Bhd, Goh Ah Lek, Mashitajaya Sdn Bhd and Mutual Speed Sdn Bhd. She had telephoned her husband to ask what was to be done and was instructed to telephone Dato Zul for his fax number and to fax the document to him. After faxing the document to Dato Zul, she was asked to SMS the names of the companies, the number of the akuan penerimaan and number of persons to Dato Zul as he was out of the office. PW20 testified that did as she was told.

[60] On 8 July 2008, PW20 had accompanied her husband to the office of 'Borhan' at Taman Sri Gombak where they were arrested by BPR officers. PW20 and Abdul Jabbar had then brought the BPR officers to Dato Zulkafli's office at SS19, Subang Jaya to look for Dato Zulkafli.

[61] In respect of the evidence of PW20, the court is of the considered view that notwithstanding that her deceased husband was not able to testify as to the role that they played, however PW20 was able to do so as she had clearly played a role too. She was able to testify as to her receipt of the fax from 'Borhan' asking for 255 VDRs for four companies. She had recounted asking her husband, Abdul Jabbar, for instructions. She was instructed to telephone Dato Zul for his fax number and to fax the document to him. She did so. She was then asked to SMS the names of the companies, the number of the akuan penerimaan and number of persons to Dato Zul as he was out

of the office. Again she did as she was told. PW20 was able to recall that the 255 VDRs was for four companies, namely Syarikat Vectica Resources Sdn Bhd, Goh Ah Lek, Mashitajaya Sdn Bhd and Mutual Speed Sdn Bhd. In light of the foregoing, the court finds that PW20 provided an important link between 'Borhan' and Dato Zul.

[62] Dato Zulkafli b Maulud (PW21) is the owner of Syarikat PSSB Strategic Holding Sdn Bhd which dealt, *inter alia,* with outsourcing workers. He had been dealing with the obtaining of VDRs from the Immigration Department.

[63] PW21 had known Dato Low Chang Hian (PW29) since 2007. He was a golf buddy who had assisted PW21 in obtaining VDRs some five to six times. Dato Low would charge RM300 for each worker. During cross-examination he stated that it was his understanding from Dato Low that the payments collected were as political donations for the Minister of Home Affairs. The court notes that PW21 had stated during cross-examination that he had no prior dealings with Syed Abdullah, the Minister of Home Affairs, and further that he had never met a person named Sim Guan Yu.

[64] PW21 admitted knowing Abdul Jabbar bin Abdullah, an agent for foreign workers, who is now deceased. He knew the deceased's wife as 'Rus'. He described how Abdul Jabbar would give to him the details of the VDRs that he required, namely, the name of the company, reference number and the number of workers. Whilst he charged RM300 per worker, RM280 would be paid to Dato Low for services whilst he, PW21, would only receive RM20 per worker.

[65] After PW21 had received the details of the VDRs required, he would SMS the details to Dato Low. He was unsure as to what actions Dato Low would take but only knew that Dato Low would SMS to him once the approvals were obtained. The length of time for obtaining the VDRs was uncertain, from a day or two days to a week. And after the approvals were obtained, he would inform Abdul Jabbar.

[66] PW21 had testified that between 23 June 2008 and 8 July 2008 the total number of VDRs that he had handled was 4337. The amount that he had to pay Dato Low was 4337 x RM280 = RM1,214,360. The portion for himself was RM20 x 4337= RM86,740.

[67] On 7 July 2008, PW21 had received an SMS from Abdul Jabbar to secure VDRs for 255 workers for four employers, namely Mutual Speed, Mashita, Goh Ah Lek and Vetica. After receiving the SMS, he had forwarded the details to Dato Low. After about a week, he had received confirmation of the approvals of the 255 VDRs and he had informed this in turn to Abdul Jabbar.

[68] On 9 July 2008 at about 3pm, Dato Zulkafli (PW21) was arrested in his office. He admitted receiving the fax P195 and SMS from PW20 which he had forwarded to Dato Low Chang Hian (PW29). He had given information to the BPR about how much was charged and to whom. He was asked to set up a meeting with Dato Low to settle payments. Accordingly, PW21 had telephoned Dato Low at 8.30pm on 9 July 2008 to inform that payment was ready. Arrangements were made to meet at the PJ Hilton at 9.30pm. PW21 went to the meeting with cash of RM256,400 and a cheque for RM98,000.

[69] Dato Low arrived at about 10pm with his wife. PW21 handed Dato Low the cash and the cheque. Whilst the cash was accepted, the cheque was returned. PW21 was asked to cash the cheque first. After the cash had passed hands, Dato Low and his wife were arrested.

[70] From the recounting of the evidence, PW21 provided the link to Dato Low.

[71] The story now moves to Dato Low Chang Hian (PW29). He is a Singapore citizen holding PR status in Malaysia. He had known the appellant since 2006, some two and a half years before the incident. He also knew Dato' Zulkafli bin Maulud with whom he played golf.

[72] According to PW29, it was Sim who had asked him to go around and see whether any of PW29's friends wanted to apply for VDRs for foreign workers. PW29 then approached Dato Zul. He admitted having helped Dato Zul facilitate the approval of VDRs.

[73] PW29 described how the process was carried out. Dato Zul would SMS the particulars for approval to PW29 who would, in turn, SMS the particulars to the appellant for his approval. PW29 would keep a record of the particulars (account number, number of workers and the name of the company) that were given by Dato Zul.

[74] PW29 confirmed in his evidence what the payment was for. His recorded evidence at p. 846 of jilid 5 of the appeal records appears as follows:

> Q: Was there any payment/fee involved between you and Dato' Zul?
>
> A: This was at the instructions of Mr. Sim. Mr. Sim says that the charges for this Calling Visa is about RM 280 per person. This RM 280 - RM 180 according to Sim was to be given to the Minister - RM 20 to Mr. Sim's friend who is a lawyer, that's what he told me, that connected him to the Minister.
>
> Q: Any share to yourself?
>
> A: RM 40 Sim take for himself. RM 20 give to Datuk Wahid. RM 20 for my expenses for each person. That's what Mr. Sim said.

[75] PW29 identified the 16 handwritten pages (P211 a-p) as that which were written by him. On these pages were recorded particulars such as the account numbers, the names of the companies requesting for VDRs and, lastly, the number of persons. These particulars were obtained from Dato Zul and this explains the word "Zul" appearing at the top of each page.

[76] PW29 also explained the meaning of the document that was written by him on a Ritz-Carlton letterhead (P205). The total number of VDRs approved is 3773. Based on RM280 per person, the amount due would be RM1,056,440. RM350,000 was paid by Zul to PW29 at the PJ Hilton which monies were delivered to Sim. On 3rd July, Dato Zul gave PW29 an envelope said to contain RM320,000 which was handed to Sim that same night. The next day Sim telephoned PW29 to complain that the contents of the envelope were short by RM5,500. On 9 July 2008, Dato Zul delivered an envelope said to contain RM251,000.

[77] PW29 testified that after receiving the SMSes from Dato Zul, he would then SMS Dato Wahid, the appellant. And in due course, the appellant would respond with "Approved" by way of SMS.

[78] As regards payment, PW29 recounted an incident after Dato Zul had made his first payment of RM350,000. A few days after PW29 had delivered the money to Sim at Prince Hotel, Sim had called PW29 to meet at the appellant's house. After some discussion on other matters, Sim had given PW29 an envelope said to contain RM50,000 and said that it was to be shared between the appellant and PW29. It is PW29's evidence that he did not even open the envelope but had just handed the envelope over to the appellant.

[79] With reference to the events on night of 10 July 2008, PW29 had told the court that late that night, Dato Zul had telephoned him to go to PJ Hilton because he wanted to deliver money. As such, PW29 had gone to PJ Hilton arriving there after midnight. There, he had met Dato Zul at the coffeehouse. Dato Zul had handed over a packet said to contain RM251,000. PW29 took the packet without opening it. As he was about to leave the coffeehouse, he was arrested by the BPR officers. PW29 confirmed that the BPR had asked for, and he had agreed to give, his cooperation regarding their ongoing investigation.

[80] On 10 July 2008, at about 10.30pm, PW29 had made a phone call to the appellant. He told the appellant that he was coming to see him and that he had a packet to deliver to him. He was unable to recall if he had told the appellant what the contents of the packet were. The appellant had not asked PW29 what the packet was about but had merely replied that PW29 could go over and see him.

[81] At the appointed time (9.30pm), PW29 went to the appellant's house at Jalan Ledang, Off Jalan Duta, together with two BPR officers in his Mercedes 350. One BPR officer posed as his driver whilst the other, Penguasa Chang Ching, sat at the back with PW29 and posed as his nephew. They drove straight onto his compound and stopped "just outside the porch on the road" leading to the house. PW29 came out of the car to knock on the door. The BPR officers did not get out of the car.

[82] According to PW29, the packet contained RM60,000. The packet was described as "some kind of plastic paper bag". PW29 passed the bag to the appellant and said he was in a hurry as he was leaving for Jakarta the following morning. The accused took the packet from PW29. PW29 told the appellant that Chang Ching was his nephew whom he had just picked up from the airport. The appellant had waved to Chang Ching. PW29 then left. These events took place very fast. The entire sequence of events from the time that PW29 knocked on the door to the time that he left took less than 5 minutes.

[83] At the time when PW29 left, the appellant was still standing at the door, right after that Chang Ching got out of the car and moved to the door. As for PW29, he walked away and was later escorted back by some other BPR officers in a different car.

[84] Questions abound as to the purpose of the meeting on the night of 10 July 2008. Was it for the purpose of handing over the RM60,000 as contended by the respondent? PW29 testified that assuming the appellant's portion was RM20 per worker, then the amount due to the appellant was RM20 x 4337 = RM86,740. A sum of RM20,000 had been given on an earlier occasion. As such, the RM60,000 was part of the appellant's entitlement of RM86,740.

[85] During cross-examination, PW29 agreed that the meeting on the night of 10 July 2008 was set up to lay a trap for the appellant. He confirmed that the appellant had never asked him for the RM60,000 on 10 July 2008 or at any time before that date. Further, Sim had also not asked PW29 to give RM60,000 to the appellant. He agreed that it was the BPR who had asked him to give the plastic bag containing the RM60,000 to the appellant.

[86] During cross-examination, PW29 agreed that he did not know what were the contents of the envelope said to contain RM50,000 that was to be shared between the appellant and PW29 since he had never opened the envelope. He also did not know what were the contents of the envelope said to contain RM20,000 that was given to the appellant by Sim through PW29. He agreed that the only person who could confirm this was Sim but that he had not seen Sim in court.

[87] Who is this Sim? PW29 did not know his full name nor the name of his company. According to PW29, Sim is a Singaporean who is said to be close to Syed Abdullah and Syed Hamid Albar, the former Minister of Home Affairs. He denied that he was detained together with Sim or that he had passed the packet to the appellant to be given to Sim as he would be away in Indonesia for a few days. However, he agreed that he had been to the appellant's house together with Sim and that it was he who had introduced Sim to the appellant.

[88] PW29 testified during cross-examination that after the first and second receipt of RM150,000 and RM320,000 respectively were received from Dato Zul, he had not given any monies to the appellant. He further said that the only reason that he had given the RM60,000 to the appellant was because the BPR had asked him to do so.

[89] The evidence of PW29 as to the events of 10 July 2008 must be seen together with the evidence of Penguasa SPRM Chang Ching (PW30) and Penolong Penguasa Mohd Haris b Ibrahim (PW31).

[90] According to Penguasa SPRM Chang Ching (PW30), at about 7pm on 10 July 2008 he was informed by the Ketua Cawangan Tindakan Khas, Tuan Ezani about an operasi perangkap that was to be carried out that night where Dato Low Chang Hian (PW29) was to hand over wang perangkap of RM60,000 to Dato Wahid, the Director General of Immigration. PW30 was directed to play the role of the nephew of Dato Low and was to witness the transaction of Dato Low handing over the money to the appellant.

[91] The court notes that PW30's evidence in the main corresponds with that of PW29. They went to the appellant's house in PW29's Mercedes Benz with PW29 and PW30 seated at the rear whilst Mohd Haris acted as the driver. The gate was open when they arrived at the appellant's residence. The car entered and stopped at the main door. PW29 was directed to phone the appellant to inform that he had arrived. PW29 then came out of the car through the rear right door carrying with him a red and white plastic package containing the RM60,000. PW29 knocked at the door and it was opened by the appellant. PW29 said something to the appellant and the latter was seen raising his hand and smiling at PW30 who was seated in the car. PW30 saw PW29 handing over to the appellant the package which he had carried with him from the car. The appellant was seen accepting the package with his right hand. In the words of PW30, he saw the appellant "buka beg plastic dan lihat ke dalam sambil bercakap dengan Datuk Low". He denied the defence suggestion that the appellant had not looked into the plastic package at any time.

[92] Not long afterwards, PW29 reentered the car. PW30 saw the appellant enter the house although the main door remained open. PW30 had then reported to Tuan Ezani that the transaction involving the trap notes had taken place. PW30 and Penolong Penguasa Mohd Haris (PW31) had then alighted from the car and entered the appellant's house. PW31 identified himself as a BPR officer and showed his authority card. PW30 saw the plastic package which was received by the appellant on the dining table. He heard Penolong Penguasa Mohd Haris (PW31) asking the appellant whether that was the package that he had received from Dato Low and received an affirmative answer. The appellant was asked to sit on a sofa in the living room. The appellant appeared "gelisah dan gementar".

[93] Penolong Penguasa Mohd Haris bin Ibrahim (PW31) was a witness during the BPR ambush on 9 July 2008 when Dato Zul (PW21) handed over RM256,400 to Dato Low (PW29) at the PJ Hilton. He was also present on 10 July 2008 outside the appellant's house and he saw PW29 handing over a red and white plastic bag to the appellant. The plastic bag was accepted by the appellant with his right hand.

[94] PW31's account of the events of the night of 10 July 2008 was that when he and PW30 had headed towards the appellant's front door, he had arrived first. He had given the salam which was responded to by the appellant. He had identified himself as a BPR officer and had shown the appellant his authority card. He had entered the house and informed the appellant that he was suspected of having received RM60,000 corruptly. The appellant was then at the dining table which was near the front door and appeared to be shocked and uncomfortable ("terkejut dan seperti tidak selesa"). PW31 then asked the appellant where was the RM60,000 which he had received from Dato Low. The appellant pointed in the direction of the dining table on which was placed a red and white plastic bag. The appellant was directed to sit on the sofa in the living room and by this time, the rest of the BPR team had arrived.

[95] During cross-examination, PW31 agreed that after he had identified himself as a BPR officer, the appellant had not tried to close the front door. He did not prevent PW30 and PW31 from entering the house. He agreed that when the appellant was told that he was suspected of corruptly receiving RM60,000, his answer was "Mana ada?" He had then asked the appellant where the bag containing money was and to this the appellant had pointed to the plastic bag on the dining table.

[96] Thus, after looking at the whole case in totality, the court finds that the learned HMS was correct in finding that the prosecution had established the ingredients of the charge. It was an established fact that the appellant was, at the material time, a Government servant and the Director-General of Immigration. The then Minister of Home Affairs was Tan Sri Syed Hamid Albar. Prior to 10 June 2008 the Minister of Home Affairs approved all

VDRs. Following an application made by the appellant to the Minister for authority to approve VDRs, after 12 June 2008, both the Minister and the appellant had authority to approve VDRs.

[97] It was also proved that the appellant had corruptly agreed to accept for himself a gratification (bribe) of RM60,000 in cash from PW29. The charge against the appellant was for "secara rasuah menyetuju-terima bagi diri kamu suatu suapan". As pointed out by the learned Deputy Public Prosecutor, agreeing to accept "tak sampai tahap" accept. The court has carefully perused the grounds of the learned HMS where she had found that the appellant did not refuse the gratification. Instead, he had accepted the gratification.

[98] The evidence adduced would also point to the irresistible conclusion that the appellant had agreed to accept the RM60,000 as part payment as a reward for hastening the approval of the VDRs. As correctly pointed out by the learned deputy, this is a case where we would have to look at the facts in detail. This is a genuine case starting with P193 and the arrest of PW19 following the report that was lodged by PW18. This was followed by the arrest of Abdul Jabbar who was implicated by PW19. Although he has since passed away however there is the evidence of his wife, Rusalwani bt Husin (PW20), to the effect that she had sent the fax containing P195 to Dato Zulkafli b Maulud (PW21). PW21 is arrested next and confirms that he had received the fax and had sent it on to Dato Low Chang Hian (PW29). Following that Dato Low was arrested on 9 July 2008.

[99] In this case, it is not just the evidence of Dato Low Chang Hian (PW29) that is material. Of equal importance is the evidence of all the other witnesses starting from PW18 and ending with PW29. Although the appellant may not know PW19 or PW20 and her husband, or even PW21, the link between all these witnesses would show that their evidence is relevant to connect the approval of the VDRs for cash to the appellant.

[100] One of the issues raised by the appellant was whether the learned HMS had properly considered the appellant's defence and whether the said defence was but a mere denial. The appellant's defence was that he had not known Hasnan Hassan (PW18), Buruganudeen (PW19), the late Abdul Jabbar or his wife Rusalwani (PW20) or Datuk Zulkafli (PW21) and that he had never asked money from PW18, PW19, PW21 or PW29 for the approval of VDRs. He did not know that PW29 was coming to give him money on the material day and he did not know that the plastic bag that he was handed contained money. He denied that after he was handed the plastic bag, he had opened it a little to see what was inside the bag.

[101] This then was the appellant's defence. In light of this defence, the court is of the considered view that the learned HMS was not in error when she found that the appellant's defence was more in the nature of an afterthought and a bare denial.

[102] In this regard, the court would note here that the appellant's denial of asking PW29 for the RM60,000 would not amount to much of a defence. From a careful understanding of the arrangements between the participants in this scheme of arranging for speedier approval of VDRs for payment, it may not be for the appellant to actually ask PW29 or anyone else for payment of any actual sum. It was the understanding that payment would be made and was in fact made on previous occasions. The payments would have been collected by others.

[103] It must be noted that with reference to the master list P192, all 4337 applications for VDRs were approved by the appellant. Whilst it is true that there was no time limit to approve the VDRs, however, the fact remains that the appellant had approved certain VDRs very quickly whilst others had languished unapproved. Those who had sought "assistance" for speedier approvals would have their VDRs approved earlier. This is borne out by the evidence of the appellant when he told the court that when he helped his friends, he could approve VDRs for them wherever he was by locking into the FORM system. Although he did not admit that he had approved the VDRs of "friends" who sought his assistance for cash, however the question remains as to why certain applications could be left languishing for months whilst others could be approved within days.

[104] In the final analysis, after duly considering the defence of the appellant in the light of the evidence that had been adduced by the prosecution, the court is of the considered view that the learned HMS was not in error when she found that the appellant's defence was more in the nature of a bare denial. The court is of the view that his protestations that he did not ask PW29 and certain other persons for money for the approval of the VDRs would sound hollow and thin in light of clear evidence from the prosecution witnesses as to how the transactions were carried out by the different actors. First, messages or feelers were sent out that approval of VDRs could be expedited for money. Information as to the employers requiring approval of VDRs and the number of Bangladeshi workers involved would be supplied to Buruganudeen a/l Mohamed Ismail (PW19) or otherwise known as 'Borhan'. PW19 would then contact Abdul Jabbar and SMS/fax the list to Abd Jabbar's house. Abdul Jabbar in turn would contact Dato Zul with the details of the applications for approval. Dato Zul's contact was Dato Low Chang Hian (PW29) and PW29 was the final contact with the appellant. The link between the requests for approval of VDRs and the lists of VDRs approved would amount to positive proof that such a scheme for expediting approval of VDRs for payment did in fact exist. The final entrapment where the appellant accepted the plastic bag containing monies was only the last card in the whole deck of cards.

[105] After carefully considering the defence in the light of the prosecution evidence, the court is satisfied that the learned HMS was not in error when she found that the defence had not succeeded in casting a reasonable doubt as to the truth of the prosecution's case. The court finds that the learned HMS was correct when she found that the defence had not succeeded in rebutting the statutory presumption and that the prosecution had succeeded in making out its case beyond all reasonable doubt.

Sentence

[106] On the issue of sentence, the learned HMS had duly considered the appellant's appeal for a lighter sentence. Counsel at the Sessions Court had submitted that his interdiction from duty amounted to a sentence, his 33 years of service with the Government and the fact that with his conviction, he would lose his pension. On the other hand, the learned deputy had urged the HMS to consider that the appellant, as the top man in Jabatan Immigration, should have set a better example. Instead, during the period of one month after he was given the mandate to approve VDRs, he had approved about 11,000 VDRs. The HMS was also urged to consider public interest.

[107] The maximum penalty for an offence under s. 11(a) of the Anti-Corruption Act 1997 is imprisonment for a term of not less than 14 days and not more than 20 years and a fine of not less than five times the sum or value of the gratification or RM10,000, whichever is the higher. The court agrees totally with the case of *Hamidon Mat Yatim v. PP* [1995] 3 CLJ 724 relied upon by the learned HMS which states that:

> ... in cases of corruption it is necessary to impose a sentence of imprisonment as a sentence of fine has no deterrent effect. Corrupt government servants should be sentenced severely not only as examples to others but also to protect the image of the Government service as a whole. The fact that the appellant here has lost his important post and has suffered the anguish of a trial and the appeal is not a mitigating factor.

[108] In all the circumstances, the court is of the considered view that the sentence of six years imprisonment and to a fine of RM300,000, in default to one year imprisonment, is fair and reasonable and not manifestly excessive and the court will affirm the said sentence.

Conclusion

[109] In conclusion, the court, after carefully considering the notes of proceedings, the grounds of judgment of the learned HMS and the written submissions of both counsel, had dismissed the appeal of the appellant in respect of both conviction as well as sentence. The order of conviction and sentence of six years imprisonment and a fine of RM300,000, in default to one year imprisonment, imposed by the learned HMS is hereby affirmed.